



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MURDISE MOORE,

Plaintiff,

- against -

LOUIS DEJOY,

Defendant.
-----X

18-CV-9967 (JPC) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

On March 14, 2022, the Court held oral argument on Defendant's pending motion to dismiss. The Court explained to the parties that the Court may convert the motion to one for summary judgment (as suggested as an option by Defendant) and asked if Plaintiff Ms. Moore wished to submit any additional factual information. Ms. Moore expressed her desire to attempt to obtain and submit proof of her allegedly having filed a **formal complaint to the EEOC** (as distinct from her counseling request), regarding her claim of age discrimination based on a hostile work environment, including comments made by Ms. Henry. The EEO case number for the relevant proceeding is **4B-100-0122-18**.

The relevant facts as described by Defendant are as follows: "On September 27, 2018, Plaintiff contacted the Postal Service's EEO office again, this time complaining of alleged improper conduct and comments by Patricia Henry. (Flanagan Decl. ¶ 15.) EEO case number 4B-100-0025-18 was opened ("Second EEO Case"). (Flanagan Decl. ¶ 15.) Plaintiff filed a Form 2564-A ("Information for Pre-Complaint Counseling"), which the agency received on November 9, 2018, in which she alleged that, when she was walking back from her break on September 8, Patricia Henry "ranted to me screaming your break

is over you old mother fucking bitch.” (Flanagan Decl. ¶ 15, Ex. L.) She further alleged that, on September 19, 2018, Patricia Henry said, “the old lady came back,” in reference to Plaintiff. (Flanagan Decl. ¶ 15, Ex. L.) She indicated that she was represented by counsel. (Flanagan Decl. ¶ 15, Ex. L.) On December 13, 2018, EEO Dispute Resolution Specialist Listra Charles sent Plaintiff a letter stating that she had “concluded the processing of your discrimination claim initiated on September 27, 2018,” and informing Plaintiff that she could “do nothing at which point your inquiry will expire and no further action will be taken on your counseling request, or you can elect to file a formal complaint.” (Flanagan Decl. ¶ 15, Ex. M.) The letter informed Plaintiff that she had 15 days from the date of receipt of the letter to file a formal complaint. (Flanagan Decl. ¶ 15, Ex. M.) Ms. Charles attached two documents to the letter: a Notice of Right to File Individual Complaint, and a blank Form 2565 (“EEO Complaint of Discrimination in the Postal Service.”). (Flanagan Decl. ¶ 15, Ex. M.) “Plaintiff never filed a formal complaint.” (Defendant’s Memorandum in support of motion to dismiss filed Dec. 3, 2021 (Dkt. 70) at p.7-8.

Accordingly, **no later than April 14, 2022**, Plaintiff Ms. Moore shall file any additional factual information and briefing concerning the information that she wishes to submit in opposition to Defendant’s pending motion to dismiss, which the Court may convert to a motion for summary judgment pursuant to Federal Rules of Civil Procedure 12(d) and 56. If Plaintiff files additional information, the Court will provide Defendant with an opportunity to respond. If Plaintiff does not file any additional information by April 14, 2022, the Court will proceed to decide the motion, potentially converting it to one for summary judgment. The Court does not require Local Rule 56.1 statements of undisputed and disputed fact to resolve the motion.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', written over a horizontal line.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: March 14, 2022
New York, New York

Copies transmitted this date to all counsel of record.

The Clerk's Office is respectfully directed to mail a copy of this Order to Plaintiff pro se and note service on the docket:

Murdise Moore
340 West 47th Street
Apt. 5-A
New York, NY 10036